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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Appeal No. 208-DB of 1999

Date of Decision : March 31, 2008

Raghbir

... Appellant

Versus

State of Haryana

... Respondent

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL,
HON'BLE MR. JUSTICE S.D. ANAND.**

Present : Mr. C.B.Kaushik, Advocate, for the appellant.
Mr. P.S. Sullar, Deputy Advocate General, Haryana,
for the respondent.

S.D. ANAND, J.

While acquitting Ved Pal, Suresh and Umed, the learned Trial Judge convicted appellant Raghbir for having committed the murder of deceased Rajesh, who was having a love affair with former's daughter Babita. (Raghbir was otherwise acquitted of the offence under Section 201 of the Indian Penal Code for want of proof).

It is common ground that Sham Sunder and Harish Batra (before whom the appellant had allegedly made an extra-judicial confession) had turned hostile. The learned Trial Judge placed reliance upon the testimony of PW 12 Pawan Kumar and PW 13 Ashok Kumar to record the impugned finding of indictment. In that very context, the learned

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Trial Judge drew sustenance from the fact that the appellant had not produced Mst. Babita to deny the inference drawable from the photographs and the love letters purported to have been authored by her. In view of the above facts, we do not feel called up to analyse the other part of the prosecution presentation which, even otherwise, is not sufficient to connect the appellant with the crime for which he stands convicted. Our adjudicatory exercise is, thus, confined to the analysis of the statements of PW 12 Pawan Kumar and PW 13 Ashok Kumar.

All that PW 12 Pawan Kumar (a real brother of Rajesh deceased) stated was that the deceased had a love affair with Babita; that they wanted to marry each other; that Rajesh had informed his family members and the family members of Babita about it and that he (i.e. PW12 Pawan Kumar) "learnt in the village that my brother Rajesh had been murdered." Insofar as PW 13 Ashok Kumar is concerned, he too is a real brother of the deceased. He testified that his deceased brother Rajesh had a love affair with Babita; that the appellant and other members of his family had held out a threat that Rajesh would be killed if he visited the house of Babita and that it came to his notice on 22.4.1997 that his brother had been murdered at Rohtak. He further testified that "On coming to Rohtak, we did not learn how Rajesh was killed and by whom. However, due to earlier threats, we suspected that Raghbir might have been murdered Rajesh."

As would be evident from a perusal of the testimony of PW 12 Pawan Kumar and PW 13 Ashok Kumar in entirety, the present is neither a case of direct ocular testimony nor a case of circumstantial evidence. In the case of the latter, the mere proof of the deceased having had a love affair

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with Babita (daughter of the appellant) would not be sufficient. In order to obtain a finding of indictment on the basis of circumstantial evidence, the prosecution is required to prove a complete chain from which the only inference drawable would be that the appellant is accountable at law for the commission of the impugned crime. The mere proof of the fact that the deceased had a love affair with Babita does not indicate that the chain of the events is complete.

It also requires particular notice at this stage that though the inquest proceedings had taken place on 21.4.1997, the FIR in the context came to be lodged only on 23.4.1997. There is no explanation forthcoming on the record to explain the delay in the lodging of the First Information Report.

In the light of the foregoing discussion, we find the present to be a case where there is complete want of substantive evidence to prove the charge against the appellant. The appeal shall accordingly stand allowed. The judgement indicting the appellant shall stand set aside. The appellant shall stand acquitted of the charge.

(S. D. ANAND)
JUDGE

March 31, 2008.

(ADARSH KUMAR GOEL)
JUDGE

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